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PR

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/343,759	06/30/99	HULL	R PPC-668

QM32/0531

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EXAMINER

RACHUBA, M

ART UNIT	PAPER NUMBER
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3724

DATE MAILED:

05/31/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

09/343,759

Applicant(s)

HULL ET AL.

Examiner

M Rachuba

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3724

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 1-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8. The traversal is on the ground(s) that it is not clear how Group II, which applicant interpreted as the subcombination, can be used to cut foil. This is not found persuasive. Group I, directed to a method of forming a weakness in a web, is the subcombination, used with the combination of Group II, method of making a tampon. Secondly, the method of forming a weakness in a web can clearly be used with another material such as foil, which is a separate utility than that claimed in the combination.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
It was not executed in accordance with either 37 CFR 1.66 or 1.68. The declaration is unsigned.

Specification

3. The disclosure is objected to because of the following informalities: The information listing under Cross-reference to Related Applications is missing: there are no serial numbers, and the dates are incomplete.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21-23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Friese, '100. '100 discloses the claimed method, including forming a line of weakness in the web of thermoplastic, liquid-permeable, apertured film. See column 8, lines 42-46. The fact that the cutting method leaves the web joined by "small so-called webs" has been interpreted as meaning that the web has a line of weakness comprising perforations and scores, as broadly claimed. If applicant argues this interpretation, it is the examiner's position that the use of perforations and scores, as broadly claimed, would have been obvious to one of ordinary skill in the art, as it would have been an obvious matter of design choice to make the different portions of the line of weakness of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within

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the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other methods of making tampons are cited of interest.

8. Any inquiry concerning the content of this communication or earlier communications from the examiner should be directed to M. Rachuba whose telephone number is (703) 308-1361. The examiner can normally be reached on Monday through Friday from 8:30 AM to 3:00 PM. Any inquiries concerning other than the content of this and previous communications, such as missing references or filed papers not acknowledged, should be directed to the Customer Service Representative, Tech Center 3700, (703) 306-5648.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached on (703) 308-2187. The fax phone number for this Group is (703) 305-3579.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Rachuba of Art Unit 3724 at the top of your cover sheet.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

M. RACHUBA
PRIMARY PATENT EXAMINER
ART UNIT 3724



mtr
May 31, 2001